IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

Mat.Appeal.No. 208 of 2007

OS.552/2004 OF FAMILY COURT, KOTTARAKKARA
.....

PETITIONER: APPELLANT IN MAT APPEAL/DEFENDANT IN O.S.

SUMA R.,AGED 42 YEARS, D/O.KRISHNAN NAIR
SUNIL BHAVAN, ARAMPUNNA, ELAMPAL P.O.,
PUNALUR REP.BY P/A HOLDER, KRISHNAN NAIR,
72 YEARS, S/O.GOVINDAN PILLAI, RESIDING AT
SUNIL BHAVAN, ARAMPUNNA, ELAMPAL P.O.,
PUNALUR.

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.R.SURAJ KUMAR
SMT.GEETHA P.MENON

RESPONDENTS: PLAINTIFF IN O.S.

RAJAN PILLAI,
AGED 45 YEARS, S/O.LATE SIVARAJAN PILLAI,
RESIDING AT PONAL THARAYIL, ADINAD NORTH P.O.,
KARUNAGAPPALLY.

BY ADV. SRI.JOHNSON GOMEZ

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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J.B. KOSHY & V. GIRI, JJ.

Mat. Appeal No. 208 of 2007

Dated this the 24th day of August, 2007

Judgment

Koshy,J.

Respondent filed a suit before the Family Court for realisation of value of jewellery and for realisation of the amount paid. It was purely a money suit. His father, power of Attorney holder, appeared for the appellant/defendant in the suit. She was also represented by an advocate. Same Power of Attorney holder filed this appeal also. The appellant was declared as ex parte for the following reasons:

> "Though the defendant entered appearance through Advocate she did not personally appear and finally she is set exparte."

Therefore, suit was decreed after accepting the proof affidavit. Even though the case is filed before the Family Court, it is purely a money suit and in money suit presence of the parties is not required unless special circumstance like counselling etc. their personal presence is required. It is for the plaintiff to prove the allegations. If proof affidavit is filed, parties can be cross-examined by the defendant. If the defendant is

not adducing sufficient evidence to rebut the points proved by the plaintiff, it is for the court to dispose off or dismiss the suit. Merely because defendant was not present personally, he cannot be declared ex parte if he is represented by an advocate. It is also submitted that the appellant in this case was employed in Gulf country as a housemaid. Therefore, during leave period, she can appear. Practical difficulties also should be looked into by the Family Court. In any event, a money suit can be decided on the basis of evidence adduced by the parties and suit cannot be dismissed merely for non-appearance of defendant when defendant appeared through advocate or power of attorney holder. For non-appearance of the defendant in person, they cannot be declared ex parte. In the above circumstances, impugned ex parte judgment is set aside and we direct the Family Court to take the matter on file and dispose of the case on merit. Parties should appear before the Family Court, either personally or through advocate on 24.9.2007.

The appeal is allowed by way of remand.

J.B.KOSHY
JUDGE

V. GIRI
JUDGE

vaa

J.B. KOSHY AND
V.GIRI,JJ.

Mat. Appeal No.208/2007

Judgment

Dated:24th AUGUST, 2007